

urbanized area of 200,000 or more in population.

*Performing* (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

*Railroad* means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

*Recipient* means an entity receiving Federal financial assistance under section 3, 9, or 18, of the FT Act, or under section 103(e)(4) of title 23 of the United States Code.

*Refuse to submit* (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

*Safety-sensitive function* means any of the following duties:

- (1) Operating a revenue service vehicle, including when not in revenue service;
- (2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- (3) Controlling dispatch or movement of a revenue service vehicle;
- (4) Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used in revenue service, unless the recipient receives funding under 49 U.S.C. 5309, is in an area less than 50,000 in population

and contracts out such services, or funding under 49 U.S.C. 5311 and contracts out such services.

(5) Carrying a firearm for security purposes.

*Screening test* means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

*Small operator* means a recipient or subrecipient primarily operating in a nonurbanized area or in an urbanized area of less than 200,000 in population.

*Vehicle* means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A "mass transit vehicle" is a vehicle used for mass transportation or for ancillary services.

*Violation rate* means the number of covered employees (as reported under § 654.53 of this part) found during random tests given under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the industry given random alcohol tests under this part plus the total reported number of employees in the industry who refuse a random test required by this part.

[59 FR 7549, Feb. 15, 1994, as amended at 60 FR 12299, Mar. 6, 1995; 60 FR 39620, Aug. 2, 1995; 61 FR 37224, July 17, 1996; 64 FR 426, Jan. 5, 1999]

#### **§ 654.9 Preemption of State and local laws.**

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order, to the extent that:

(1) Compliance with both the State or local requirement and any requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.